

ASSEMBLY BILL

No. 1714

Introduced by Assembly Member Plescia

February 22, 2005

An act to amend Sections 180.1, 180.7, 188.5, and 31010 of, to add Sections 31010.1, 31010.2, and 31074 to, and to repeal Sections 31015 and 31070 of, the Streets and Highways Code, relating to transportation, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

AB 1714, as introduced, Plescia. Bay Area state-owned toll bridges: financing of seismic repair and replacement.

(1) Existing law estimates the cost to seismically retrofit the state-owned toll bridges and to replace the east span of the San Francisco-Oakland Bay Bridge at \$4,637,000,000, including \$2,600,000,000 for the east span replacement. Existing law identifies funding to be made available for this purpose from various funding sources, including a \$1 per vehicle toll surcharge on Bay Area state-owned toll bridges and Proposition 192 seismic repair bond funds, among other sources.

This bill would revise the estimated cost of the state-owned toll bridge seismic retrofit and replacement program to \$7,105,000,000, including \$4,830,000,000 for the replacement east span of the San Francisco-Oakland Bay Bridge and revised amounts for certain other toll bridges. The bill would identify \$300,000,000 in additional state funds from various sources to fund the demolition costs of the replaced east span of the San Francisco-Oakland Bay Bridge. The bill would delete provisions requiring the replacement east span to be built incorporating a specific single tower cable suspension design. The bill

would require any remaining additional funds required to complete the program to be paid for by the Metropolitan Transportation Commission (MTC) from various sources.

(2) Existing law specifies the powers and duties of the Department of Transportation, MTC, and the Bay Area Toll Authority with respect to state-owned Bay Area bridge toll revenue and expenditure, and the financing of the toll bridge seismic retrofit and replacement program.

This bill would provide that MTC may meet its funding obligations pursuant to (1) above by allocating any eligible state and federal funds available for allocation by MTC, adopting an increased bonding limit for the existing \$1 seismic retrofit toll surcharge, restructuring any existing toll bridge debt, allocating resources made available from the Regional Measure 2 \$1 toll increase approved by Bay Area voters in June 2004, or by imposing an additional seismic toll surcharge. The bill would authorize MTC to implement these provisions, and would authorize MTC to implement tolls using value or variable pricing. The bill would extend the financing plan for certain existing toll revenues from 30 to 40 years. The bill would delete provisions limiting the revenue generated by the seismic toll surcharge to \$907,000,000. The bill would make changes to reporting requirements by the department regarding the toll bridge projects and would enact other related provisions.

(3) Existing law sets forth requirements for the solicitation and evaluation of bids and the awarding of contracts by public entities for the erection, construction, alteration, repair, or improvement of any public structure, building, road, or other public improvement. Existing law also authorizes specified state agencies, cities, and counties to implement alternative procedures for the awarding of contracts on a design-build basis.

This bill would authorize the Department of Transportation to award contracts for toll bridge seismic retrofit and replacement work under any acquisition method approved by the Secretary of the Business, Transportation and Housing Agency as being in the best interest of the state, including design-sequencing, design-build, and best value, and would delete requirements for the bridge projects to be performed under contracts awarded to the lowest responsible bidder. The bill would also authorize the department to implement a specified design-build contracting process for the purposes of that program. Under these provisions, a contractor would be required to make certain declarations that the information submitted by the contractor

has been prepared with reasonable diligence and is true and complete. A certification of a material matter that is known to be false would be a misdemeanor, thereby creating a new crime.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for specified reasons.

This bill would declare that it is to take effect immediately as an urgency statute.

Vote: $\frac{2}{3}$. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

- 1 SECTION 1. The Legislature hereby finds and declares all of
- 2 the following:
- 3 (a) Following the partial collapse of the east span of the San
- 4 Francisco-Oakland Bay Bridge as a result of the 1989 Loma
- 5 Prieta earthquake, legislation was enacted to make seismic safety
- 6 a top transportation priority in the state.
- 7 (b) The San Francisco-Oakland Bay Bridge is a key element of
- 8 the state's transportation infrastructure and a lifeline structure for
- 9 the San Francisco Bay Area.
- 10 (c) The bridge is of critical economic significance for local,
- 11 regional, and state commerce.
- 12 (d) Work on a replacement structure of the east span is now
- 13 underway but cost increases have exceeded previously
- 14 committed funds.
- 15 (e) The site of the east span is located between two major
- 16 historically active earthquake faults.
- 17 (f) It is the intent of the Legislature that the work on the east
- 18 span be completed as expeditiously as possible and that
- 19 additional funding be provided to complete the work in the most
- 20 effective and timely fashion to ensure public safety and economic
- 21 well-being.
- 22 (g) Myriad complexities have arisen due to the self-anchored
- 23 suspension design required by statute. These complexities

1 threaten to delay ultimate delivery of a completed bridge and also
2 threaten to add even further costs to the project.

3 (h) The skyway design, recommended by the Governor, is a
4 more conventional bridge design. It holds the promise of an
5 earlier delivery date at lower costs. The skyway design offers the
6 highest potential to reduce the overall cost of the toll bridge
7 program.

8 SEC. 2. Section 180.1 of the Streets and Highways Code, as
9 amended by Section 7 of Chapter 310 of the Statutes of 1995, is
10 amended to read:

11 180.1. (a) Projects under this article shall not be subject to the
12 provisions of Chapter 1 (commencing with Section 10100) of
13 Part 2 of Division 2 of the Public Contract Code, except the
14 following:

15 (1) Article 1.5 (commencing with Section 10115) of Chapter 1
16 of Part 2 of Division 2 of the Public Contract Code, as to projects
17 not subject to the provisions of Part 23 of Title 49 of the Code of
18 Federal Regulations.

19 (2) Section 10128 of the Public Contract Code.

20 (3) Article 9 (commencing with Section 10280) of Chapter 1
21 of Part 2 of Division 2 of the Public Contract Code.

22 (4) Article 10 (commencing with Section 10285) of Chapter 1
23 of Part 2 of Division 2 of the Public Contract Code.

24 (b) Projects undertaken by a local agency under this article
25 shall not be subject to the Local Agency Public Construction Act
26 (Chapter 1 (commencing with Section 20100) of Part 3 of
27 Division 2 of the Public Contract Code).

28 (c) Projects under this article ~~shall~~ *may* be performed under a
29 contract awarded to the lowest responsible bidder or by contract
30 ~~upon informal bids, or by a combination thereof, in the discretion~~
31 ~~of the department or local agency by any acquisition method~~
32 *proposed by the department including, but not limited to,*
33 *design-sequencing, design-build, and best value, with the*
34 *approval of the Secretary of the Business, Transportation and*
35 *Housing Agency as being in the best interest of the state.*

36 (d) *The Department of Transportation shall report within 60*
37 *days of the end of each calendar quarter to the Joint Legislative*
38 *Budget Committee and the committees in each house of the*
39 *Legislature that consider transportation issues regarding the*

1 *department's progress toward completion of seismic safety*
2 *retrofit projects.*

3 SEC. 3. Section 180.7 of the Streets and Highways Code is
4 amended to read:

5 180.7. This article shall remain in effect only until the date the
6 Director of Transportation certifies to the Secretary of Business,
7 Transportation and Housing that all construction activities for the
8 seismic retrofit or replacement of all state-owned toll bridges is
9 complete, ~~or June 30, 2005, whichever occurs first, and as of that~~
10 ~~date is repealed.~~

11 SEC. 4. Section 188.5 of the Streets and Highways Code is
12 amended to read:

13 188.5. (a) The Legislature finds and declares all of the
14 following:

15 (1) The department has determined that in order to provide
16 maximum safety for the traveling public and to ensure
17 continuous and unimpeded operation of the state's transportation
18 network, six state-owned toll bridges are in need of a seismic
19 safety retrofit, and one state-owned toll bridge is in need of a
20 partial retrofit and a partial replacement.

21 (2) The bridges identified by the department as needing
22 seismic retrofit are the Benicia-Martinez Bridge, the Carquinez
23 Bridge, the Richmond-San Rafael Bridge, the San
24 Mateo-Hayward Bridge, the San Pedro-Terminal Island Bridge
25 (also known as the Vincent Thomas Bridge), the San
26 Diego-Coronado Bridge, and the west span of the San
27 Francisco-Oakland Bay Bridge. The department has also
28 identified the east span of the San Francisco-Oakland Bay Bridge
29 as needing to be replaced. That replacement span will be safer,
30 stronger, longer lasting, and more cost efficient to maintain than
31 completing a seismic retrofit for the current east span.

32 (3) The south span of the Carquinez Bridge is to be replaced
33 pursuant to Regional Measure 1, as described in subdivision (b)
34 of Section 30917.

35 (4) The cost estimate to retrofit the state-owned toll bridges
36 and to replace the east span of the San Francisco-Oakland Bay
37 Bridge is ~~four billion six hundred thirty-seven million dollars~~
38 ~~(\$4,637,000,000)~~ *seven billion one hundred five million dollars*
39 *(\$7,105,000,000)*, as follows:

1 (A) The Benicia-Martinez Bridge retrofit is one hundred
2 ~~ninety eighty~~ million dollars ~~(\$190,000,000)~~ *(\$180,000,000)*.

3 (B) The north span of the Carquinez Bridge retrofit is one
4 hundred ~~twenty-five~~ *fifteen* million dollars ~~(\$125,000,000)~~
5 *(\$115,000,000)*.

6 (C) The Richmond-San Rafael Bridge retrofit is ~~six nine~~
7 hundred ~~sixty-five~~ *fourteen* million dollars ~~(\$665,000,000)~~
8 *(\$914,000,000)*.

9 (D) The San Mateo-Hayward Bridge retrofit is one hundred
10 ~~ninety sixty-five~~ million dollars ~~(\$190,000,000)~~ *(\$165,000,000)*.

11 (E) The San Pedro-Terminal Island Bridge retrofit is ~~sixty-two~~
12 *fifty-nine* million dollars ~~(\$62,000,000)~~ *(\$59,000,000)*.

13 (F) The San Diego-Coronado Bridge retrofit is one hundred
14 five million dollars *(\$105,000,000)*.

15 (G) The west span of the San Francisco-Oakland Bay Bridge
16 retrofit, as a lifeline bridge, is seven hundred *thirty-seven* million
17 dollars ~~(\$700,000,000)~~ *(\$737,000,000)*.

18 (H) Replacement of the east span of the San
19 Francisco-Oakland Bay Bridge is ~~two four~~ billion ~~six eight~~
20 hundred *thirty* million dollars ~~(\$2,600,000,000)~~
21 *(\$4,830,000,000)*.

22 (b) It is the intent of the Legislature that the following
23 amounts from the following funds shall be allocated until
24 expended, for the seismic retrofit or replacement of state-owned
25 toll bridges:

26 (1) Six hundred fifty million dollars *(\$650,000,000)* from the
27 1996 Seismic Retrofit Account in the Seismic Retrofit Bond
28 Fund of 1996 for the seven state-owned toll bridges identified by
29 the department as requiring seismic safety retrofit or
30 replacement.

31 (2) One hundred forty million dollars *(\$140,000,000)* in
32 surplus revenues generated under the Seismic Retrofit Bond Act
33 of 1996 that are in excess of the amount actually necessary to
34 complete Phase Two of the state's seismic retrofit program.
35 These excess funds shall be reallocated to assist in financing
36 seismic retrofit of the state-owned toll bridges.

37 (3) Fifteen million dollars *(\$15,000,000)* from the Vincent
38 Thomas Toll Bridge Revenue Account.

39 (4) The funds necessary to meet both of the following:

1 (A) A principal obligation of two billion two hundred
2 eighty-two million dollars (\$2,282,000,000) from the seismic
3 retrofit surcharge, including any interest therefrom, imposed
4 pursuant to Section 31010, subject to the limitation set forth in
5 subdivision (c) and subdivision (b) of Section 31010.

6 (B) All costs of financing, including capitalized interest,
7 reserves, costs of issuance, costs of credit enhancements and any
8 other financial products necessary or desirable in connection
9 therewith, and any other costs related to financing.

10 (5) Thirty-three million dollars (\$33,000,000) from the San
11 Diego-Coronado Toll Bridge Revenue Fund.

12 (6) Not less than seven hundred forty-five million dollars
13 (\$745,000,000) from the State Highway Account to be used
14 toward the eight hundred seventy-five million dollars
15 (\$875,000,000) state contribution, to be achieved as follows:

16 (A) (i) Two hundred million dollars (\$200,000,000) to be
17 appropriated for the state-local transportation partnership
18 program described in paragraph (7) of subdivision (d) of Section
19 164 for the 1998–99 fiscal year.

20 (ii) The remaining funds intended for that program and any
21 program savings to be made available for toll bridge seismic
22 retrofit.

23 (B) A reduction of not more than seventy-five million dollars
24 (\$75,000,000) in the funding level specified in paragraph (4) of
25 subdivision (d) of Section 164 for traffic system management.

26 (C) Three hundred million dollars (\$300,000,000) in
27 accumulated savings by the department achieved from better
28 efficiency and lower costs.

29 (7) Not more than one hundred thirty million dollars
30 (\$130,000,000) from the Transit Capital Improvement Program
31 funded by the Public Transportation Account in the State
32 Transportation Fund to be used toward the eight hundred
33 seventy-five million dollars (\$875,000,000) state contribution. If
34 the contribution in subparagraph (A) of paragraph (6) exceeds
35 three hundred seventy million dollars (\$370,000,000), it is the
36 intent that the amount from the Transit Capital Improvement
37 Program shall be reduced by an amount that is equal to that
38 excess.

39 (8) (A) ~~The funds necessary to meet principal obligations of~~
40 ~~not less than six~~ Six hundred forty-two million dollars

1 (\$642,000,000) from the state's share of the federal Highway
2 Bridge Replacement and Rehabilitation (HBRR) Program.

3 (B) If the project costs exceed ~~four billion six hundred~~
4 ~~thirty-seven million dollars (\$4,637,000,000)~~ *seven billion one*
5 *hundred five million dollars (\$7,105,000,000)*, the department
6 may program not more than four hundred forty-eight million
7 dollars (\$448,000,000) in project savings or other available
8 resources from the Interregional Transportation Improvement
9 Program, the State Highway Operation and Protection Program,
10 or federal bridge funds for that purpose.

11 ~~(C) None of the funds identified in subparagraph (B) may be~~
12 ~~expended for any purpose other than the conditions and design~~
13 ~~features described in paragraph (9).~~

14 ~~(9) The estimated cost of replacing the San Francisco-Oakland~~
15 ~~Bay Bridge listed in subparagraph (H) of paragraph (4) of~~
16 ~~subdivision (a) is based on the following conditions:~~

17 ~~(A) The new bridge shall be located north adjacent to the~~
18 ~~existing bridge and shall be the Replacement Alternative N-6~~
19 ~~(preferred) Suspension Structure Variation, as specified in the~~
20 ~~Final Environmental Impact Statement, dated May 1, 2001,~~
21 ~~submitted by the department to the Federal Highway~~
22 ~~Administration.~~

23 ~~(B) The main span of the bridge shall be in the form of a~~
24 ~~single tower cable suspension design and shall be the~~
25 ~~Replacement Alternative N-6 (preferred) Suspension Structure~~
26 ~~Variation, as specified in the Final Environmental Impact~~
27 ~~Statement, dated May 1, 2001, submitted by the department to~~
28 ~~the Federal Highway Administration.~~

29 ~~(C) The roadway in each direction shall consist of five lanes,~~
30 ~~each lane will be 12 feet wide, and there shall be 10-foot~~
31 ~~shoulders as an emergency lane for public safety purposes on~~
32 ~~each side of the main-traveled way.~~

33 *(9) Three hundred million dollars (\$300,000,000) in project*
34 *savings or other available resources from the Interregional*
35 *Transportation Improvement Program, the State Highway*
36 *Operation and Protection Program, or federal bridge funds to*
37 *fund the demolition of the replaced east span of the San*
38 *Francisco-Oakland Bay Bridge.*

(10) Remaining funds sufficient to complete the seismic retrofit of toll bridges, as identified in paragraph (2) of subdivision (a), to be paid for by the Metropolitan Transportation Commission.

(c) If the actual cost of retrofit or replacement, or both retrofit and replacement, of toll bridges is less than the cost estimate of ~~four~~ ~~seven~~ billion ~~six~~ ~~one~~ hundred ~~thirty-seven~~ ~~five~~ million dollars—~~(\$4,637,000,000)~~ (\$7,105,000,000), there shall be a reduction in the amount provided in ~~paragraph~~ paragraphs (4) and (10) of subdivision (b) equal to the proportion of total funds committed to complete the projects funded from funds generated from paragraph paragraphs (4) and (10) of subdivision (b) as compared to the total funds from paragraphs (6), (7), ~~and~~ (8), and (9) of subdivision (b), and there shall be a proportional reduction in the amount specified in ~~paragraph~~ paragraphs (8) and (9) of subdivision (b).

(d) If the department determines that the actual costs exceed the amounts identified in subparagraph (B) of paragraph (8) of subdivision (b), the department shall report to the Legislature within 90 days from the date of that determination as to the difference and the reason for the increase in costs.

(e) Notwithstanding any other provision of law, the commission shall adopt fund estimates consistent with subdivision (b) and provide flexibility so that state funds can be made available to match federal funds made available to regional transportation planning agencies.

(f) For the purposes of this section, “principal obligations” are the amount of funds generated, either in cash, obligation authority, or the proceeds of a bond or other indebtedness.

(g) (1) Commencing January 1, 2004, and quarterly thereafter until completion of all applicable projects, the department shall provide quarterly seismic reports to the transportation committees of both houses of the Legislature and to the commission for each of the toll bridge seismic retrofit projects in subdivision (a) *no later than February 15, May 15, August 15, and November 15 of each year.*

(2) The report shall include details of each toll bridge seismic retrofit project and all information necessary to clearly describe the status of the project, including, but not limited to, all of the following:

(A) A progress report.

1 (B) The baseline budget for support and capital outlay
2 construction costs that the department assumed at the time that
3 ~~Chapter 907 of the Statutes of 2001 was enacted~~ *the act*
4 *amending this section in the first year of the 2005-06 Regular*
5 *Session was enacted.*

6 (C) The current or projected budget for support and capital
7 outlay construction costs.

8 (D) Expenditures to date for support and capital outlay
9 construction costs.

10 (E) A comparison of the current or projected schedule and the
11 baseline schedule that was assumed at the time that ~~Chapter 907~~
12 ~~of the Statutes of 2001~~ *the act amending this section in the first*
13 *year of the 2005-06 Regular Session was enacted.*

14 (F) A summary of milestones achieved during the quarterly
15 period and any issues identified and actions taken to address
16 those issues.

17 (h) (1) Commencing on January 1, 2004, and quarterly
18 thereafter until completion of all applicable projects, the
19 department shall provide quarterly seismic reports to the
20 transportation committees of both houses of the Legislature and
21 to the commission for other seismic retrofit programs *no later*
22 *than February 15, May 15, August 15, and November 15 of each*
23 *year.*

24 (2) The reports shall include all of the following:

25 (A) A progress report for each program.

26 (B) The program baseline budget for support and capital
27 outlay construction costs.

28 (C) The current or projected program budget for support and
29 capital outlay construction costs.

30 (D) Expenditures to date for support and capital outlay
31 construction costs.

32 (E) A comparison of the current or projected schedule and the
33 baseline schedule.

34 (F) A summary of milestones achieved during the quarterly
35 period and any issues identified and actions taken to address
36 those issues.

37 SEC. 5. Section 31010 of the Streets and Highways Code is
38 amended to read:

39 31010. (a) There is hereby imposed a seismic retrofit
40 surcharge equal to one dollar (\$1) per vehicle for passage on the

1 ~~bay area~~ *Bay Area* bridges, except for vehicles that are authorized
2 toll-free passage on these bridges.

3 (b) Funds generated by subdivision (a) may not be used to
4 repay nontoll revenues committed to fund projects identified in
5 paragraph (2) of subdivision (a) of Section 188.5. Following the
6 date of the submission of the final report required in subdivision
7 ~~(d)~~ (g) of Section 188.5, funds generated pursuant to subdivision
8 (a) that are in excess of those needed to meet the toll
9 commitment as specified by paragraph (4) of subdivision (b) of
10 Section 188.5, including annual debt service payments, if any,
11 required to support the commitment, and other elements required
12 to meet the obligations of the department's financing plan, shall
13 be available to the authority for funding, consistent with Sections
14 30913 and 30914, the purposes and projects described in those
15 sections. The department shall transfer to the authority on an
16 annual basis the funds made available to the authority under this
17 subdivision.

18 ~~(c) (1) There shall be no increase in the seismic retrofit~~
19 ~~surcharges beyond the level identified in subdivision (a) for the~~
20 ~~purposes identified in paragraph (4) of subdivision (a) of Section~~
21 ~~188.5, except that the~~ The department shall have the authority to
22 increase the seismic retrofit surcharge for debt service purposes
23 only if the bank finds and the Department of Finance confirms
24 that both of the following apply:

25 (A) Circumstances exist that have resulted in a reduction in the
26 funds generated by subdivision (a) so as to jeopardize the
27 payment of debt service for which toll revenues are authorized.

28 (B) Bonds issued under Chapter 4.3 (commencing with
29 Section 30950) shall not be impaired solely by action taken under
30 this section, as evidenced by confirmation of the then existing
31 ratings on those bonds, by the rating agencies then rating the
32 bonds.

33 (2) The requirement for the funding described in subparagraph
34 (B) of paragraph (1) shall not apply if the voters approve an
35 increase in the toll rate pursuant to subdivision (b) of Section
36 30921.

37 (d) The term of the financing plan developed by the
38 department under Section 31071, for the purposes of funding the
39 projects described in Sections 30913 and 30914, is extended for
40 a period of ~~30~~ 40 years commencing on January 1, 2008.

(e) This section shall remain in effect only until the date that the California Transportation Commission notifies the Secretary of State that sufficient funds have been generated to meet the obligations identified in paragraph (4) of subdivision (b) of Section 188.5, and repayment of any outstanding debt secured by tolls, and as of that date is repealed. The California Transportation Commission shall provide the notice described in this subdivision upon making the determination set forth in this subdivision.

SEC. 6. Section 31010.1 is added to the Streets and Highways Code, to read:

31010.1. (a) The Metropolitan Transportation Commission may meet its obligations pursuant to paragraph (10) of subdivision (b) of Section 188.5 through any of the following:

(1) By allocating eligible state and federal funds available to the Metropolitan Transportation Commission for allocation to transportation projects, including, but not limited to, regional transportation improvement program funds.

(2) By adopting an increased bonding limit relative to seismic retrofit surcharge bridge toll revenues available pursuant to Chapter 4.5 (commencing with Section 31000).

(3) By restructuring any existing toll bridge debt.

(4) From resources made available from Regional Measure 2.

(5) By imposing an additional seismic surcharge.

(b) Funds generated by paragraph (5) of subdivision (a) may only be used by the department to fund projects identified in paragraph (2) of subdivision (a) of Section 188.5. Following the date of the submission of the final report required in subdivision (g) of Section 188.5, funds generated pursuant to subdivision (a) that are in excess of those needed to meet the toll commitment as specified by paragraph (10) of subdivision (b) of Section 188.5, including annual debt service payments, if any, required to support the commitment, and other elements required to meet the obligations of the department's financing plan, shall be available for transportation improvements within the bridge corridors, for those bridges identified in Section 188.5, as recommended by the Metropolitan Transportation Commission and approved by the department.

(c) The Metropolitan Transportation Commission shall have the power to implement the provisions of this section.

(d) Nothing in this section shall impair the payment of debt service for which toll revenues are authorized.

SEC. 7. Section 31010.2 is added to the Streets and Highways Code, to read:

31010.2. The Metropolitan Transportation Commission, when imposing tolls and seismic surcharges, may implement value or variable pricing, upon approval of the department .

SEC. 8. Section 31015 of the Streets and Highways Code is repealed.

~~31015. (a) Revenues generated from the surcharge shall not exceed nine hundred seven million dollars (\$907,000,000), unless any of the following occurs:~~

~~(1) After completing 30 percent of the design, and after completion of a cost estimate by the department, the authority selects a design that costs more than the cost of a single tower cable suspension bridge selected by the department.~~

~~(2) The authority requests funding for the replacement or relocation of the transbay bus terminal in the City and County of San Francisco.~~

~~(3) The authority requests funding for a bicycle or pedestrian access that is to be added to either the new east span of the San Francisco-Oakland Bay Bridge or the retrofitted west span of that bridge, or both.~~

~~(b) If the authority does any of the things listed in paragraphs (1) to (3), inclusive, of subdivision (a), the local share of the project costs shall be increased by an amount equal to any additional costs that are incurred as a result of the authority's decision.~~

~~(c) The department shall include the amenities requested by the authority only if sufficient funds generated by the seismic retrofit surcharge are made available to fully pay for those amenities.~~

SEC. 9. Section 31070 of the Streets and Highways Code is repealed.

31070. The Legislature hereby finds and declares all of the following:

(a) Following the 1989 Loma Prieta earthquake, legislation was enacted to make seismic safety a top transportation priority in this state. In the wake of the Northridge earthquake of 1994, when nine major freeway bridges were destroyed and 11 major

1 highways were closed, seismic retrofit of the state's bridges and
2 highways again became the number one priority on the state's
3 transportation agenda.

4 (b) In 1996, voters approved Proposition 192, a two billion
5 dollar (\$2,000,000,000) bond measure for state highway seismic
6 retrofit. This funding measure includes the costs of retrofitting
7 seven state-owned toll bridges, five in the San Francisco-Oakland
8 Bay area and two in southern California. Replacement costs for
9 the eastern span of the San Francisco-Oakland Bay Bridge were
10 factored in as well.

11 (c) Subsequent to the adoption of Proposition 192, new cost
12 estimates by the department increase the toll bridge retrofit
13 program from six hundred fifty million dollars (\$650,000,000) to
14 two billion six hundred million dollars (\$2,600,000,000). To
15 address this increase, the Legislature enacted legislation in 1997,
16 establishing the compromise of a 50/50 funding agreement
17 between the state and local toll payers to finance all state-owned
18 bridges in the San Francisco-Oakland Bay area, Los Angeles, and
19 San Diego.

20 (d) It is the further intent of the Legislature that the department
21 address the funding deficiency through a combination of
22 financing options. These options may or may not include
23 obtaining a loan under the federal Transportation Infrastructure
24 Finance and Innovation Act of 1998 (P.L. 105-178), a program
25 authorized by the Congress of the United States in 1998 to
26 provided credit assistance for large transportation projects.

27 (e) Other financing options include revenue bonds and
28 commercial paper should be issued under the authority of the
29 California Infrastructure and Economic Development Financing
30 Bank, the California Transportation Commission, or other,
31 appropriate entity.

32 SEC. 10. Section 31074 is added to the Streets and Highways
33 Code, to read:

34 31074. (a) Pursuant to subdivision (c) of Section 180.1, the
35 department may let design-build contracts for the design and
36 construction of projects identified in Section 188.5. For the
37 purpose of this chapter, these projects shall be deemed public
38 works.

1 (b) For purposes of this section, “design-build” means a
2 procurement process in which both the design and construction
3 of a project are procured from a single entity.

4 (c) For purposes of this section, “design-build entity” means a
5 partnership, corporation, or other legal entity that is able to
6 provide appropriately licensed contracting, architectural, and
7 engineering services as needed.

8 (d) For the purposes of this section, “best value” means a
9 value determined by objective criteria and may include, but is not
10 limited to, price, features, functions, life-cycle costs, and other
11 criteria deemed appropriate by the department.

12 (e) Prior to contracting for the procurement of state
13 transportation projects, the Director of Transportation shall do
14 both of the following:

15 (1) Prepare a program setting forth the scope of the project
16 that may include, but is not limited to, the size, type, and desired
17 design character of the transportation projects and site,
18 performance specifications covering the quality of materials,
19 equipment, and workmanship, or any other information deemed
20 necessary to describe adequately the state’s needs. The
21 performance specifications shall be prepared by a design
22 professional duly licensed and registered in the state.

23 (2) (A) Establish a competitive prequalification and selection
24 process for design-build entities, including any subcontractors
25 listed at the time of bid, that clearly specifies the prequalification
26 criteria, as well as recommends the manner in which the winning
27 entity will be selected.

28 (B) Prequalification shall be limited to consideration of all of
29 the following criteria:

30 (i) Possession of all required licenses, registration, and
31 credentials in good standing that are required to design and
32 construct the project.

33 (ii) Submission of evidence that establishes that the
34 design-build entity members have completed, or demonstrated
35 the capability to complete, projects of similar size, scope, or
36 complexity, and that proposed key personnel have sufficient
37 experience and training to competently manage and complete the
38 design and construction of the project.

39 (iii) Submission of a proposed project management plan that
40 establishes that the design-build entity has the experience,

1 competence, and capacity needed to effectively complete the
2 project.

3 (iv) Submission of evidence that establishes that the
4 design-build entity has the capacity to obtain all required
5 payment and performance bonding, liability insurance, and errors
6 and omissions insurance, as well as a financial statement that
7 assures the department that the design-build entity has the
8 capacity to complete the project.

9 (v) Provision of a declaration certifying that applying
10 members of the design-build entity have not had a surety
11 company finish work on any project within the last five years.

12 (vi) Provision of information and a declaration providing
13 details concerning all of the following:

14 (I) Any construction or design claim or litigation totaling more
15 than five hundred thousand dollars (\$500,000) or 5 percent of the
16 annual value of work performed, whichever is less, settled
17 against any member of the design-build entity over the last five
18 years.

19 (II) Serious violations of the Occupational Safety and Health
20 Act, as provided in Part 1 (commencing with Section 6300) of
21 Division 5 of the Labor Code, settled against any member of the
22 design-build entity.

23 (III) Violations of federal or state law, including, but not
24 limited to, those laws governing the payment of wages, benefits,
25 or personal income tax withholding, or of Federal Insurance
26 Contributions Act (FICA) withholding requirements, state
27 disability insurance withholding, or unemployment insurance
28 payment requirements, settled against any member of the
29 design-build entity over the last five years. For the purposes of
30 this subclause, only violations by a design-build member as an
31 employer shall be deemed applicable, unless it is shown that the
32 design-build entity member, in his or her capacity as an
33 employer, had knowledge of his or her subcontractor's violations
34 or failed to comply with the conditions set forth in subdivision
35 (b) of Section 1775 of the Labor Code.

36 (IV) Information required by Section 10162 of the Public
37 Contract Code.

38 (V) Violations of the Contractors' State License Law (Chapter
39 9 (commencing with Section 7000) of Division 3 of the Business

1 and Professions Code), excluding alleged violations or
2 complaints.

3 (VI) Any conviction of any member of the design-build entity
4 of submitting a false or fraudulent claim to a public agency over
5 the last five years.

6 (VII) Provision of a declaration that the design-build entity
7 will comply with all other provisions of law applicable to the
8 project, including, but not limited to, the requirements of Chapter
9 1 (commencing with Section 1720) of Part 7 of Division 2 of the
10 Labor Code.

11 (C) Any declaration required under subparagraph (B) shall
12 state that reasonable diligence has been used in its preparation
13 and that it is true and complete to the best of the signer's
14 knowledge. A person who certifies as true any material matter
15 that he or she knows to be false is guilty of a misdemeanor and
16 shall be punished by not more than one year in a county jail, by a
17 fine of not more than five thousand dollars (\$5,000), or by both
18 that fine and imprisonment.

19 (D) The department may use a design-build competition based
20 upon best value and other criteria as herein provided. Such a
21 design-build competition shall be based upon performance, price,
22 and other criteria set forth by the department in the solicitation of
23 proposals. The department shall establish technical criteria and
24 methodology, including price, to evaluate proposals and shall
25 describe the criteria and methodology in the request for
26 design-build proposals. Award shall be made to the design-build
27 entity whose proposal is judged as providing the best value in
28 meeting the interest of the department and the objectives of the
29 project.

30 (f) The Legislature recognizes that the design-build entity is
31 charged with performing both design and construction. Because
32 a design-build contract may be awarded prior to the completion
33 of the design, it is often impracticable for the design-build entity
34 to list all subcontractors at the time of the award. As a result, the
35 subcontractor listing requirements contained in Chapter 4
36 (commencing with Section 4100) of Part 1 of Division 2 of the
37 Public Contract Code can create a conflict with the
38 implementation of the design-build process by requiring all
39 subcontractors to be listed at a time when a sufficient set of plans
40 may not be available. It is the intent of the Legislature to

1 establish a clear process for the selection and award of
2 subcontracts entered into pursuant to this section in a manner that
3 retains protection for subcontractors while enabling design-build
4 projects to be administered in an efficient fashion. Therefore, all
5 of the following requirements shall apply to subcontractors,
6 licensed pursuant to Chapter 9 (commencing with Section 7000)
7 of Division 3 of the Business and Professions Code, that are
8 employed on design-build projects undertaken pursuant to this
9 section:

10 (1) The department, in each design-build request for proposal,
11 may identify the types of subcontractors, by subcontractor license
12 classification, that will be listed by the design-build entity at the
13 time of the bid. In selecting the subcontractors that will be listed
14 by the design-build entity, the department shall limit the
15 identification to only those license classifications deemed
16 essential for proper completion of the project. In no event,
17 however, may the department specify more than five licensed
18 subcontractor classifications. In addition, at its discretion, the
19 design-build entity may list an additional two subcontractors,
20 identified by subcontractor license classification, that will
21 perform design or construction work, or both, on the project. In
22 no event shall the design-build entity list at the time of bid a total
23 amount of subcontractors that will perform design or
24 construction work, or both, in a total of more than seven
25 subcontractor license classifications on a project. All
26 subcontractors that are listed at the time of bid shall be afforded
27 all of the protection contained in Chapter 4 (commencing with
28 Section 4100) of Part 1 of Division 2 of the Public Contract
29 Code. All subcontracts that were not listed by the design-build
30 entity at the time of bid shall be awarded in accordance with
31 paragraph (2).

32 (2) All subcontracts that were not to be performed by the
33 design-build entity in accordance with paragraph (1) shall be
34 competitively bid and awarded by the design-build entity, in
35 accordance with the design-build process set forth by the
36 department in the design-build package. The design-build entity
37 shall do all of the following:

38 (A) Provide public notice of the availability of work to be
39 subcontracted in accordance with Section 10140 of the Public
40 Contract Code.

1 (B) Provide a fixed date and time on which the subcontracted
2 work will be awarded in accordance with Section 10141 of the
3 Public Contract Code.

4 (C) As authorized by the department, establish reasonable
5 prequalification criteria and standards, limited in scope to those
6 detailed in paragraph (2) of subdivision (e).

7 (D) Provide that the subcontracted work shall be awarded to
8 the lowest responsible bidder.

9 (g) Any design-build entity that is selected to design and build
10 a project pursuant to this section shall possess or obtain sufficient
11 bonding consistent with applicable provisions of the Public
12 Contract Code. Nothing in this section shall prohibit a general or
13 engineering contractor from being designated the lead entity on a
14 design-build entity for the purposes of purchasing necessary
15 bonding to cover the activities of the design-build entity.

16 (h) Any payment or performance bond written for the
17 purposes of this section shall use a bond form developed by the
18 department. In developing the bond form, the department shall
19 consult with the surety industry to achieve a bond form that is
20 consistent with surety industry standards, while protecting the
21 interests of the state.

22 SEC. 11. (a) No reimbursement is required by this act
23 pursuant to Section 6 of Article XIII B of the California
24 Constitution because a local agency or school district has the
25 authority to levy service charges, fees, or assessments sufficient
26 to pay for the program or level of service mandated by this act,
27 within the meaning of Section 17556 of the Government Code.

28 (b) No reimbursement is required by this act pursuant to
29 Section 6 of Article XIII B of the California Constitution because
30 the only costs that may be incurred by a local agency or school
31 district will be incurred because this act creates a new crime or
32 infraction, eliminates a crime or infraction, or changes the
33 penalty for a crime or infraction, within the meaning of Section
34 17556 of the Government Code, or changes the definition of a
35 crime within the meaning of Section 6 of Article XIII B of the
36 California Constitution.

37 SEC. 12. This act is an urgency statute necessary for the
38 immediate preservation of the public peace, health, or safety
39 within the meaning of Article IV of the Constitution and shall go
40 into immediate effect. The facts constituting the necessity are:

1 To ensure that the east span of the San Francisco-Oakland Bay
2 Bridge, a lifeline structure, is completed as quickly as possible to
3 withstand a seismic event, and to fund other seismic
4 improvements to various toll bridges as quickly as possible, it is
5 necessary that this act take effect immediately.

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